

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Karen L. FINCHER *et al.*

Appl. No.: 09/849,529

Filed: May 7, 2001

Title: **Nucleic Acid Molecules and Other
Molecules Associated with Plants**

Confirmation No.: 8354

Art Unit: 1631

Examiner: Michael L. BORIN

Atty. Docket: 16517.247/38-21(51893)B

**Petition for Revival of an Unintentionally Abandoned
Patent Application Under 37 C.F.R. § 1.137(f)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Mail Stop Petition

Sir:

Applicants hereby petition for revival of the above-captioned U.S. application under 37 C.F.R. § 1.137(f). Authorization to charge the official fees for this Petition is given in the accompanying transmittal letter. A duplicate copy of this Petition is enclosed.

On May 7, 2001, the above-captioned U.S. application was filed with a Request for Non-Publication, which contained a certification under 35 U.S.C. § 122(b)(2)(B)(i), including a statement that the invention “has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing.” (Request attached hereto as Exhibit A). Thereafter it was discovered that one or more foreign applications, which may be related to the invention disclosed in the above-captioned U.S. application, were subsequently filed in another country or under a multilateral agreement that requires publication at eighteen months after filing. One such application was filed on December 17, 2001 (the “Foreign Application”).¹

12/04/2003 SDENB081 00000139 502387 09849529

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¹ Where more than one application was filed in another country or under a multilateral agreement, only the date for the earliest-filed foreign application is recited herein.

Applicants inadvertently did not notify the Director of the filing of the Foreign Application within 45 days of its filing. Therefore, Applicants believe that the above-captioned U.S. application may be abandoned pursuant to 35 U.S.C. § 122 (b)(2)(B)(iii), because the Foreign Application is directed to one or more nucleic acid or amino acid sequences, or both, that exhibit at least 85% sequence identity over 80% of their length to one or more nucleic acid or amino acid sequences, or both, disclosed in the above-captioned U.S. application.²

In light of the above, Applicants hereby explicitly notify the Office of the filing of the Foreign Application on December 17, 2001, pursuant to 35 U.S.C. § 122 (b)(2)(B)(iii). Applicants assert that any delay of providing such notice to the Office was inadvertent.

Applicants hereby petition for revival of U.S. Application Serial No. 09/849,529 under 37 C.F.R. § 1.137(f). Applicants hereby assert that any and all delay in filing the required reply, *i.e.*, notification to the Office of the Foreign Application, from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b), was unintentional and respectfully request that the above-captioned U.S. application be revived.

² Applicants do not assert that nucleic acid sequences or amino acid sequences that exhibit at least 85% identity over 80% of their length either are or are not an "invention disclosed in the application" within the meaning of 35 U.S.C. § 122.

Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided below.

Respectfully submitted,



Holly Logue Prutz (Reg. Attorney No. 47,755)
David R. Marsh (Reg. Attorney No. 41,408)

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(202) 942-5000 telephone
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Date: December 3, 2003

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EXHIBIT A

PTO/SB/35 (11-00)

Approved for use through 10/31/2002. OMB 0651-0031

U.S. Patent and Trademark Office; U. S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

REQUEST AND CERTIFICATION UNDER 35 U.S.C. 122(b)(2)(B)(i)	First Named Inventor		FINCHER, Karen L.
	Title	Nucleic Acid Molecules and Other Molecules Associated with Plants	
	Atty Docket Number		16517.247 [38-21(51893)B]

I hereby certify that the invention disclosed in the attached application **has not and will not be** the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing. I hereby request that the attached application not be published under 35 U.S.C. 122(b).

May 7, 01
Date

David R. Marsh
Signature

David R. Marsh (Reg. No.41,408)

Typed or printed name

This request must be signed in compliance with 37 CFR 1.33(b) and submitted with the application **upon filing**.

Applicant may rescind this nonpublication request at any time. If applicant rescinds a request that an application not be published under 35 U.S.C. 122(b), the application will be scheduled for publication at eighteen months from the earliest claimed filing date for which a benefit is claimed.

If applicant subsequently files an application directed to the invention disclosed in the attached application in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant **must** notify the United States Patent and Trademark Office of such filing within forty-five (45) days after the date of the filing of such foreign or international application. **Failure to do so will result in abandonment of this application (35 U.S.C. 122(b)(2)(B)(iii)).**

Burden Hour Statement: This collection of information is required by 37 CFR 1.213(a). The information is used by the public to request that an application not be published under 35 U.S.C. 122(b) (and the PTO to process that request). Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This form is estimated to take 6 minutes to complete. This time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

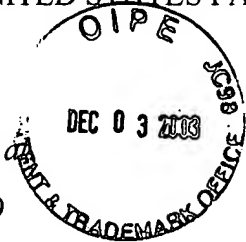
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Confirmation No. 8354

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Examiner: Michael L. BORIN

Atty. Docket: 16517.247/38-21(51893)B

**Request to Rescind Prior Request and Certification
Under 37 C.F.R. § 1.213(b)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Mail Stop Petition

Sir:

Applicants hereby request that the Request for Non-Publication and Certification under 35 U.S.C. § 122(b) filed on May 7, 2001, in the above-captioned U.S. application be rescinded in accordance with 37 C.F.R. § 1.213(b).

On May 7, 2001, the above-captioned U.S. application was filed with a Request for Non-Publication, which contained a certification under 35 U.S.C. § 122(b)(2)(B)(i), including a statement that the invention "has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing." (Request attached hereto as Exhibit A). Thereafter it was discovered that one or more foreign applications, which may be related to the invention disclosed in the above-captioned U.S. application, were subsequently filed in another country or under a multilateral agreement that requires publication at eighteen months after filing. One such application was filed on December 17, 2001 (the "Foreign Application").

Therefore, Applicants believe that the certification under 35 U.S.C. § 122(b)(2)(B)(i) filed in the above-captioned application may be incorrect. Accordingly, Applicants wish to

rescind the request for non-publication filed on May 7, 2001, for the above-captioned U.S. application. Applicants believe the certification in the above-captioned U.S. Application may be incorrect because the Foreign Application is directed to one or more nucleic acid or amino acid sequences, or both, that exhibit at least 85% sequence identity over 80% of their length to one or more nucleic acid or amino acid sequences, or both, disclosed in the above-captioned U.S. Application.¹

In light of the above, Applicants hereby explicitly notify the Office of the filing of the Foreign Application on December 17, 2001, and rescind the request for non-publication submitted in U.S. Application Serial No. 09/849,529 pursuant to 37 C.F.R. § 1.213(b). Applicants assert that any incorrect certification made under 35 U.S.C. § 122(b)(2)(B)(i) was inadvertent.

¹ Applicants make no assertion as to whether nucleic acid sequences or amino acid sequences that exhibit at least 85% identity over 80% of their length either are or are not an “invention disclosed in the application” within the meaning of 35 U.S.C. § 122.

Should the Commissioner require additional information, he is invited to contact the undersigned at the number provided below.

Respectfully submitted,



Holly Logue Prutz (Reg. Attorney No. 47,755)
David R. Marsh (Reg. Attorney No. 41,408)

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Date: December 3, 2003

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May 7, 01
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